

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**  
**Nashville, Tennessee**

August 10, 2001

**In Re:**        *BellSouth Telecommunications, Inc.'s Entry Into Long Distance  
(InterLATA) Service in Tennessee Pursuant to Section 271 of the  
Telecommunications Act of 1996*

**Docket No. 97-00309**

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**INITIAL ORDER OF HEARING OFFICER  
ON JULY 12, 2001, STATUS CONFERENCE**

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On November 22, 1999, the Tennessee Regulatory Authority (“TRA” or “Authority”), pursuant to the request of Bellsouth Telecommunications, Inc. (“BellSouth”), issued its *Order Accepting BellSouth Telecommunications, Inc.'s Notice of Voluntary Dismissal Without Prejudice and Withdrawal of Advance Notice of Section 271 Filing*, TRA Docket No. 97-00309 (Nov. 22, 1999). The *Order Accepting Withdrawal* provided that “[t]his docket shall remain open for the original purpose set forth in the Authority’s [*Order Instituting Formal Inquiry and Adopting Procedure*, TRA Docket No. 97-00309 (March 21, 1997)].”<sup>1</sup>

On May 30, 2001, BellSouth filed *BellSouth Telecommunications, Inc.'s Preliminary Notice of Filing and Request for Scheduling Conference* (“*Preliminary Notice of Filing*”)

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<sup>1</sup> A detailed account of the history of this matter is set forth in the *Order Accepting BellSouth Telecommunications, Inc.'s Notice of Voluntary Dismissal Without Prejudice and Withdrawal of Advance Notice of Section 271 Filing, In Re: BellSouth Telecommunications, Inc.'s Entry into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*, TRA Docket No. 97-00309 (Nov. 22, 1999).

with the Authority, in which it requested the setting of a scheduling conference. Pursuant to BellSouth's request, a Status Conference in this matter was held on July 12, 2001.

**I. Appearances<sup>2</sup>**

The following appearances were entered at the Status Conference:

BellSouth Telecommunications, Inc. - **Guy Hicks**, Esquire, 333 Commerce Street, Suite 2101, Nashville, TN 37201, and **Fred McCallum**, Esquire, 675 West Peachtree Street, Suite 4300, Atlanta, GA 30375;

Qwest Communications - **H. LaDon Baltimore**, Esquire, Farrar & Bates, 211 Seventh Avenue North, Suite 320, Nashville, TN 37219-1823;

Intermedia Communications - **H. LaDon Baltimore**, Esquire, Farrar & Bates, 211 Seventh Avenue North, Suite 320, Nashville, TN 37219-1823;

Time Warner Telecom of the Mid South, L.P. - **Charles B. Welch**, Esquire, Farris, Mathews, Gilman, Branam & Hellen, PLC, 618 Church Street, Suite 300, Nashville, TN 37219;

XO Tennessee, Inc. - **Henry Walker**, Esquire, Boulton, Cummings, Connors & Berry, 414 Union St., #1600, P. O. Box 198062, Nashville, TN 37219-8062;

MCI WorldCom Communications, Inc. - **Dulaney L. O'Roark**, Esquire, Six Concourse Parkway, Suite 3200, Atlanta, GA 20228;

AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc. - **James Lamoureux**, Esquire, and **Rhonda Merritt**, 1200 Peachtree St., NE Atlanta, GA 30309; and

Sprint Communications, L.P., - **Jim Wright**, Esquire, 14111 Capitol Blvd., Wake Forest, NC 27587-5900.

**II. Information Requested by Hearing Officer**

Many preliminary issues with respect to BellSouth's 271 application were discussed at the Status Conference. At the conclusion of the Status Conference, the Hearing Officer requested the following: (1) that AT&T submit in writing the Motion to Dismiss submitted

orally during the conference; (2) that all interested parties submit comments on the FCC's *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, DA 01-734, Public Notice (March 23, 2001) (hereinafter the "FCC's March 23, 2001, Public Notice"); (3) that BellSouth submit a list of TRA proceedings, whether in progress or completed, relevant to the fourteen (14) point checklist, accompanied by an explanation, to include at a minimum, how the outcome of the proceedings relate to the fourteen (14) point checklist;<sup>3</sup> and (4) that BellSouth submit its regional, Georgia approved, service quality measurements ("SQMs") for the six-month period of January 1, 2001 through June 30, 2001.<sup>4</sup>

Furthermore, BellSouth has requested that the Authority take official notice of all BellSouth interconnection agreements approved by the agency since the passage of the Act.<sup>5</sup>

Any Intervenor seeking to file comments on BellSouth's request, shall file such comments

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<sup>2</sup> The Hearing Officer advised that Parties of Record prior to BellSouth's previous withdrawal continue to remain Parties of Record. Parties of Record no longer desiring to participate in or monitor this proceeding are requested to so notify the Authority.

<sup>3</sup> In its *Preliminary Notice of Filing*, BellSouth stated that "the Authority has already completed or is in the process of completing other proceedings which relate to the fourteen point checklist." In its July 30, 2001, filing, BellSouth listed the following such proceedings: (1) *In Re: Petition of BellSouth Telecommunications, Inc. to Convene a Contested Case Proceeding to Establish "Permanent Prices" for Interconnection and Unbundled Network Elements*, TRA Docket No. 97-01262; (2) *In Re: Generic Docket to Establish of UNE Prices for Line Sharing Per FCC 99-355, and Riser Cable and Terminating Wire as Ordered in TRA Docket 98-00123*, TRA Docket No. 00-00544; (3) *In Re: Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support Systems with State and Federal Regulations*, TRA Docket No. 01-00362; and (4) *In Re: The Avoidable Costs of Providing Bundled Service for Resale by Local Exchange Telephone Companies*, TRA Docket No. 96-01331. BellSouth did not list the following TRA proceedings: (1) *In Re: Docket to Establish Generic Performance Measurements, Benchmarks and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*, TRA Docket No. 01-00193; (2) *In Re: Generic Docket to Establish Generally Available Terms and Conditions for Interconnection*, TRA Docket No. 01-00526; and (3) *In Re: Petition of AT&T Communications of the South Central States, Inc., The Competitive Telecommunications Association, and TCG MidSouth, Inc. for Structural Separation of BellSouth Telecommunications, Inc.*, TRA Docket No. 01-00405.

<sup>4</sup> According to Counsel for BellSouth, the SQMs to be filed will contain Tennessee-specific data for the provisioning and maintenance and repair measurements. See *TRA Transcript of Proceedings, July 12, 2001*, p. 49. The Authority, however, is requesting Tennessee-specific data for all measurements.

<sup>5</sup> *TRA Transcript of Proceedings, July 12, 2001*, TRA Docket No. 97-00309, p. 26.

on or before 2:00 p.m., August 31, 2001. BellSouth may respond to any comments filed on or before 2:00 p.m., September 7, 2001.

### **III. BellSouth's Section 271 Filing**

#### **a. Advance Notice and Ripeness**

In a letter to the TRA dated April 1, 1997, counsel for BellSouth agreed that BellSouth would provide the TRA at least ninety (90) days' advance notice before an application is filed with the Federal Communications Commission ("FCC") under Section 271 of the federal Telecommunications Act of 1996 (the "Act") for authority to provide interLATA services in Tennessee. At the July 12, 2001, Status Conference, counsel for BellSouth acknowledged that the original 90-day notice period would be ineffective given the time that BellSouth has chosen to file its Tennessee 271 application and the proposed hearing dates submitted by BellSouth.<sup>6</sup> Counsel for BellSouth then offered that BellSouth would readily agree to extend the advance review period.<sup>7</sup>

In the *Report and Recommendation of Hearing Officer on April 3, 1997, Status Conference*, the Hearing Officer recommended a procedural framework to efficiently direct this docket to completion, which recommendation was adopted by the Authority. BellSouth requested, in its *Preliminary Notice of Filing*, that the agency modify said procedural framework.

When BellSouth withdrew its initial 271 application, it was advised that "when BellSouth chooses to refile its . . . advance notice with the Authority, it should file

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<sup>6</sup> In its *Preliminary Notice of Filing*, BellSouth requested that the Authority schedule its 271 hearing during the week of November 5, 2001. Since BellSouth filed its 271 Application in Tennessee on July 30, 2001, the original 90-day advance notice period would expire before the proposed hearing dates.

<sup>7</sup> See *TRA Transcript of Proceedings, July 12, 2001*, TRA Docket No. 97-00309, pp. 8-9, 20-21, and 71.

simultaneously therewith the filing that it will rely on before the FCC.”<sup>8</sup> BellSouth was also advised that it “should not refile with the Authority until such time as BellSouth is persuaded that it is in compliance with Section 271 of the Act.”<sup>9</sup>

During the July 12, 2001, Status Conference, counsel for BellSouth, reminded of the non-static nature of its previous 271 filing, repeatedly confirmed that the 271 application filed by BellSouth in Tennessee will constitute the 271 application that BellSouth will file before the FCC, perhaps with a slight variation in format.<sup>10</sup> Further, counsel for BellSouth affirmed that it is BellSouth’s position that its 271 application will be compliant in all respects when filed in Tennessee.<sup>11</sup>

Under the Act, the decision of when to apply for Section 271 approval with the FCC is in the sole discretion of the Bell Operating Companies (“BOCs”). Even still, it is fair to state that it is contemplated that a BOC would only commence the 271 process after a good faith, self-determination that it is compliant.<sup>12</sup> On July 30, 2001, BellSouth voluntarily filed with the Authority what has been represented to be a complete and compliant 271 application that will be filed with the FCC. Due to the unilateral discretion BellSouth enjoys

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<sup>8</sup> *Initial Order Accepting BellSouth Telecommunications, Inc.’s Notice of Voluntary Dismissal and Withdrawal*, TRA Docket 97-00309, p.16 (June 1, 1999).

<sup>9</sup> *Id.*

<sup>10</sup> Counsel agreed that the 271 filing would include BellSouth’s *Brief in Support of Application by BellSouth for Provision of In-Region, InterLATA Services in Tennessee*.

<sup>11</sup> “Our position is we’re in compliance with the Act right now.” *TRA Transcript of Proceedings, July 12, 2001*, TRA Docket No. 97-00309, pp. 34. Counsel for BellSouth did state, however, that “new” decisions rendered by the FCC, not existing at the time BellSouth files its 271 application in Tennessee, may dictate the filing of supplemental information. *Id.* at 11. See also *BellSouth Telecommunications, Inc.’s Reply to the Comments of AT&T and the Comments of XO Tennessee Regarding the FCC’s March 23, 2001 Public Notice*, p. 6. (July 26, 2001) (“Moreover, the FCC may issue orders during the pendency of a state 271 proceeding that will impact the requirements necessary to gain FCC 271 approval and on which the Authority may want to hear evidence of compliance.”).

<sup>12</sup> “The Commission [FCC] expects that a section 271 application, as originally filed, will include all of the factual evidence on which the applicant would have the Commission rely in making its findings.” *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, DA 01-734, Public Notice, p. 3 (March 23, 2001).

as to when to file its 271 application, BellSouth will be held to its representation that its 271 application is fully compliant with the Act. Given the intended purpose of the advance notice period, it remains the expectation of the Authority that BellSouth fully appreciates the timing implications of its filing.<sup>13</sup>

**b. The Authority's Section 271 Filing Requirements**

As noted above, at the July 12, 2001, Status Conference, the Hearing Officer provided the parties with the FCC's *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, DA 01-734, Public Notice (March 23, 2001) and requested the parties to comment thereon. Comments were filed by XO Tennessee, Inc. ("XO"), BellSouth, and the Joint Commenters.<sup>14</sup>

XO contends that "the TRA cannot fulfill its 'critical statutory role' in this 271 review process unless the agency adopts procedural and substantive requirements that are consistent with the FCC's guidelines described in the Public Notice."<sup>15</sup> According to XO, the "complete-as-filed requirement is necessary to avoid the pitfalls of trying to hit a moving target, a problem which plagued the TRA during its year-long investigation of BellSouth's earlier 271 application."<sup>16</sup> Further, in order for the Authority to develop a "detailed record" and conduct a "rigorous investigation," as contemplated by the FCC, XO maintains that any

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<sup>13</sup> See *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, DA 01-734, Public Notice, p. 4 (March 23, 2001) ("We emphasize that, as a general matter, it is highly disruptive to our processes to have a record that is constantly evolving.").

<sup>14</sup> The Joint Commenters consist of AT&T Communications of the South Central States, Inc. ("AT&T"); TCG MidSouth, Inc.; Sprint Communications Company, LP; MCI WorldCom Communications, Inc.; MCI WorldCom Network Service, Inc.; Brooks Fiber Communications of Tennessee, Inc.; and MCI MCIMetro Access Transmissions Services, LLC.

<sup>15</sup> *Comments of XO Tennessee, Inc. Regarding FCC's March 23, 2001, Public Notice*, p. 1 (July 19, 2001).

<sup>16</sup> *Id.* at 3.

and all factual disputes related to BellSouth's 271 application should be submitted to the Authority on a state-specific basis.<sup>17</sup>

Like XO, the Joint Commenters maintain that the "fundamental principles" underlying the FCC's filing requirements should be adopted herein in order to deter an "incomplete and premature" 271 filing and to ensure the development of a full and complete record for evaluating BellSouth's application.<sup>18</sup>

BellSouth, on the other hand, argues that "mandating the FCC's procedural requirements in a state 271 proceeding is unnecessary and would ill-serve the Authority and could delay competitive choice and service offerings to Tennesseans."<sup>19</sup> BellSouth's reasoning is based, in part, on its position that "there are significant differences between the FCC 271 review process and state commission 271 proceedings[.]"<sup>20</sup> Since the FCC expects BellSouth to present its case grounded in the most recent data available, BellSouth argues that flexibility before the Authority is essential.<sup>21</sup>

Consistent with BellSouth's representation, that its 271 application is complete and compliant as filed, the Act, the FCC's March 23, 2001, Public Notice, and the purpose of an advance notice period, it is the expectation of the Authority that any supplemental information or documentation to the 271 application filed with the Authority on July 30, 2001, will arise, if at all, from the following: (1) new evidence solely to rebut arguments made or facts submitted by the Intervenors; (2) public decisions rendered by the FCC; (3)

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<sup>17</sup> *Id.* at 2.

<sup>18</sup> Joint Commenters *Comments on the FCC's March 23, 2001, Public Notice*, pp. 1-3 (July 19, 2001)

<sup>19</sup> *Comments of BellSouth Telecommunications, Inc. Regarding the Application of the FCC's Procedural Requirements to this Proceeding*, p. 1 (July 19, 2001).

<sup>20</sup> *Id.* at 2.

<sup>21</sup> *Id.* at 3. "[A] review of the most current information available as it becomes available during the proceeding facilitates the Authority's ability to provide its comments to the FCC." *BellSouth Telecommunications, Inc.'s*

material and relevant public orders rendered from other state proceedings in BellSouth's nine-state territory; (4) public decisions rendered by the TRA; or (5) requests of the TRA. Notwithstanding the above, however, prior to submitting any supplemental information or documentation, including information or documentation that does not fall within the five (5) prescribed categories, BellSouth must obtain permission from the Authority to do so.<sup>22</sup> Assuming, as BellSouth maintains, that its 271 application filed on July 30, 2001, is complete and compliant and is the application that BellSouth intends to rely upon before the FCC, few, if any, circumstances other than those identified here should arise requiring supplemental information.<sup>23</sup>

#### **IV. AT&T's Motion to Dismiss**

During the July 12, 2001, Status Conference, AT&T opined that any Section 271 filing by BellSouth at the end of July 2001 would on its face be premature and that this matter should therefore be dismissed. On July 19, 2001, the Joint Commenters filed a Motion to Dismiss. XO and Time Warner Telecom of the Mid-South, L.P. ("Time Warner") filed in support of the Motion to Dismiss on July 19, 2001. BellSouth submitted its reply on July 26, 2001.

As is well known, the Authority has, among others, two matters pending before it concerning nondiscriminatory access: (1) *In Re: Docket to Determine the Compliance of*

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*Reply to the Comments of AT&T and the Comments of XO Tennessee Regarding the FCC's March 23, 2001 Public Notice*, p. 6. (July 26, 2001).

<sup>22</sup> The foregoing notwithstanding, the Authority will permit BellSouth, should it so choose, to file updates of performance data, as opposed to updates/modifications to its regional SQMs, relative to the measurements submitted in this docket on July 30, 2001, without seeking leave of the Authority to do so. *See Pre-filed Direct Testimony of David A. Coon*, TRA Docket No. 97-00309, p.2 (July 30, 2001) ("In the future, BellSouth will file performance data for successive months' results.").

<sup>23</sup> Generally, it is not contemplated that BellSouth will attempt to materially revise, modify or supplement its 271 filing solely with live testimony during a hearing, and BellSouth shall take appropriate steps to avoid the same.



*BellSouth Telecommunications, Inc.'s Operations Support Systems with State and Federal Regulations*, TRA Docket No. 01-00362 (the “OSS Docket”); and (2) *In Re: Docket to Establish Generic Performance Measurements, Benchmarks and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*, TRA Docket No. 01-00193 (the “Performance Measurements Docket”). In opening the OSS Docket, the Authority affirmed that “nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition.”<sup>24</sup> Further, in opening the Performance Measurements Docket, the Authority opined that “the adoption of an ongoing performance measurement program with built-in enforcement mechanisms would provide the Authority with a tool to assure that BellSouth [is] offering nondiscriminatory access to its network in a competitively neutral manner.”<sup>25</sup>

No party contests that both of the aforementioned dockets contain subject matter that BellSouth must rely upon in support of its Tennessee 271 application.<sup>26</sup> A hearing is scheduled in the Performance Measurements Docket the week of August 20, 2001, while no hearing date has yet been identified in the OSS Docket.

The Intervenor contends that BellSouth’s 271 application is premature because “[t]he TRA cannot fully evaluate BellSouth’s checklist compliance until the generic performance measures docket is complete and sufficient data has been collected” and because “[t]he TRA cannot properly evaluate the adequacy of BellSouth’s OSS until the third-party review

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<sup>24</sup> *Order Consolidating Docket Nos. 99-00347; and 00-00392 into Docket No. 01-00193 and Opening Docket No. 01-00362, In Re: Docket to Determine the Compliance of BellSouth Telecommunications, Inc.’s Operations Support Systems with State and Federal Regulations*, TRA Docket No. 01-00362, p. 2 (May 15, 2001).

<sup>25</sup> *Order Consolidating Docket Nos. 99-00347; and 00-00392 into Docket No. 01-00193 and Opening Docket No. 01-00362, In Re: Docket to Establish Generic Performance Measurements, Benchmarks and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*, TRA Docket No. 01-00193, p. 6 (May 15, 2001).

<sup>26</sup> See *TRA Transcript of Proceedings, July 12, 2001*, TRA Docket No. 97-00309, pp. 35-9, 44.

ordered in Docket No. 01-00362 [the OSS Docket] is complete.”<sup>27</sup> Having determined that the OSS Docket and the Performance Measurements Docket are necessary and essential to ensure the provision of nondiscriminatory access by BellSouth, the Intervenor now argue that it would be premature for the Authority to proceed with its 271 review “before” those dockets are completed.<sup>28</sup>

To the contrary, BellSouth maintains that “the TRA should promptly address BellSouth’s Section 271 compliance through multiple dockets proceeding in parallel – the efficient way to address the complex Section 271 issues that the Authority has already adopted.”<sup>29</sup> BellSouth argues that “[i]nterested parties will have a full and fair opportunity to challenge BellSouth’s evidence, regardless of the docket where the issue is addressed.”<sup>30</sup>

More particularly, it is BellSouth’s position that the Authority can efficiently proceed with its 271 review because, first, notwithstanding the pending status of the TRA’s Performance Measurements Docket, BellSouth will submit its regional SQMs with Tennessee-specific data. These SQMs, according to BellSouth, are “more than sufficient for the Authority to support BellSouth’s Section 271 application at the FCC, until such time as the Authority orders, and BellSouth implements, alternative performance measures.”<sup>31</sup> Hence, according to BellSouth, it is not necessary for the agency to complete the Performance Measurements Docket before proceeding with its 271 review.

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<sup>27</sup> *Comments Concerning BellSouth’s Proposed Schedule for this Proceeding and Motion to Dismiss BellSouth’s Proposed Section 271 Schedule as Premature*, pp.1-2; *Response of XO Tennessee, Inc. and Time Warner Telecom of the Mid-South, L.P. Regarding AT&T’s Motion to Dismiss*, p.1.

<sup>28</sup> *Comments Concerning BellSouth’s Proposed Schedule for this Proceeding and Motion to Dismiss BellSouth’s Proposed Section 271 Schedule as Premature*, p. 2; *Response of XO Tennessee, Inc. and Time Warner Telecom of the Mid-South, L.P. Regarding AT&T’s Motion to Dismiss*, p.1

<sup>29</sup> *BellSouth Telecommunications, Inc.’s Reply to AT&T’s Motion to Dismiss BellSouth’s Proposed Section 271 Schedule and the Response of XO Tennessee and Time Warner Telecom to AT&T’s Motion to Dismiss*, p.2.

<sup>30</sup> *Id.* at 5.

<sup>31</sup> *Id.* at 5-6.

Second, BellSouth contends that although independent third party OSS testing can “play an important role in a 271 assessment,” the most probative evidence of its compliance with checklist item 2 is commercial usage.<sup>32</sup> BellSouth is persuaded that a demonstration of reasonable market share is indicative of nondiscriminatory access to OSS.<sup>33</sup> Therefore, BellSouth contends that “the Authority does not necessarily need any third party testing to render an opinion about BellSouth’s compliance with the competitive checklist.”<sup>34</sup>

As acknowledged by XO and Time Warner, the Act leaves to the BOCs the decision of when to proceed with a Section 271 Application.<sup>35</sup> To be sure, questions may remain concerning the operation and administration of the various dockets pending before the Authority related to BellSouth’s obligation to provide nondiscriminatory access. Still, the Hearing Officer has not found, nor have the Intervenor presented, sufficient and justifiable cause to “dismiss” BellSouth’s 271 filing.

As concerning the provision of nondiscriminatory access to OSS, the Intervenor will have ample opportunity to challenge the same in the OSS Docket. At this time, it is the expectation of the Authority that it will have completed its OSS Docket prior to BellSouth filing its Tennessee 271 application before the FCC.<sup>36</sup> With respect to performance

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<sup>32</sup> *Id.* at 6.

<sup>33</sup> *Id.* at 6-7.

<sup>34</sup> *Id.* at 6. “Thus, although the TRA certainly can and should conduct the OSS and 271 dockets in parallel, there will be substantial evidence of compliance in the 271 docket alone and the TRA should not delay its consideration of that evidence.” *Id.* at 6-7.

<sup>35</sup> *Response of XO Tennessee, Inc. and Time Warner Telecom of the Mid-South, L.P. Regarding AT&T’s Motion to Dismiss*, p.2 (“nor can the agency legally prohibit BellSouth from submitting its revised application at whatever time BellSouth chooses to make it”).

<sup>36</sup> *TRA Transcript of Proceedings, July 12, 2001*, TRA Docket No. 97-00309, p. 33 (“We don’t have a specific date in mind [as to when we intend to file our Tennessee 271 application with the FCC.] We’ve got this proceeding [271] and the OSS proceeding that we would expect would hopefully come together toward the end of this year.”) (Counsel for BellSouth). *See also, id.* at 35 (“And so I do believe it is important to keep the timing of these two dockets in sync.”) (Counsel for BellSouth).

measurements and the role they hold in both securing the provision of nondiscriminatory access and ensuring that Tennessee is irreversibly open to competition, it must not be lost that, notwithstanding the position of BellSouth with respect to its regional SQMs, a hearing is now set before the Authority in the Performance Measurements Docket within ten (10) days. Even still, however, should the agency determine to hear testimony in this proceeding on the regional SQMs, accompanied with Tennessee-specific data, the Intervenor will be permitted ample opportunity to challenge both the SQMs and their appropriateness.

For the foregoing reasons, the Motion to Dismiss is hereby denied.

#### **V. Discovery**

All parties are permitted to conduct discovery in this proceeding.<sup>37</sup> To the extent practicable, the competing local exchange companies that are parties to this proceeding shall submit consolidated discovery requests to BellSouth. The agency, although not a party to this proceeding, may serve discovery requests upon BellSouth and any other party to this proceeding at any time. As always, the parties will remain under a continuing, good faith obligation to supplement responses to discovery requests. All discovery requests and all responses thereto shall be timely served upon all parties to this proceeding.

#### **VI. Resolved Issues**

Prior to the withdrawal of BellSouth's initial, December 12, 1997, Tennessee 271 filing, the parties had agreed, in principle, that certain Section 271 issues were no longer

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Moreover, this is not the first instance in which the agency has been asked to proceed with its 271 review while a significantly related docket remained open. See *Order Denying BellSouth Telecommunications, Inc.'s March 10, 1999, Motion to Defer, In Re: BellSouth Telecommunications, Inc.'s Entry into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*, TRA Docket No. 97-00309, p. 4 (April 14, 1999) ("Since this 271 case was commenced, BellSouth has consistently and aggressively argued that the Authority could, and in fact should, proceed with this 271 case notwithstanding the posture of the Permanent Prices Case.").

contested. On or before 2:00 p.m., September 11, 2001, the parties shall in good faith submit a joint filing setting forth the 271 issues that have been resolved or are otherwise no longer contested. Any stipulations of fact shall be jointly filed on or before 2:00 p.m. September 13, 2001.

## **VII. Schedule of the Proceedings**

At the July 12, 2001, Status Conference, Counsel for BellSouth stated that BellSouth's 271 case is twofold: (1) a demonstration of compliance with Section 271(c)(1)(A); and (2) a demonstration of compliance with Section 271(c)(2).<sup>38</sup> After careful consideration, and in the interest of judicial economy and efficiency, the Hearing Officer is of the opinion that a hearing on Section 271(c)(1)(A) should be set, with a hearing, in this docket, on other Section 271 issues, including, but not limited to, Section 272 affiliate requirements and the public interest, to follow at a later time.<sup>39</sup>

BellSouth's direct case was filed on July 30, 2001. The Intervenor shall file pre-filed direct, if any, and rebuttal testimony, with respect to Section 271(c)(1)(A) issues, on or before September 18, 2001, noon, and BellSouth shall file surrebuttal thereto, with respect to Section 271(c)(1)(A) issues, on or before September 25, 2001, noon. A hearing on a

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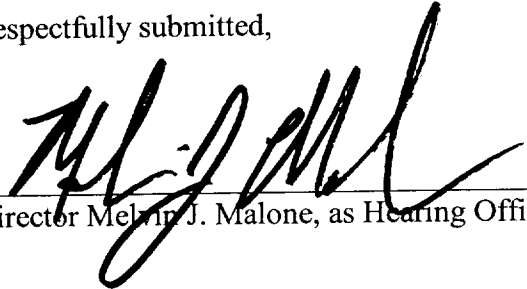
<sup>37</sup> A discovery schedule was released on August 6, 2001. See *Notice Establishing Discovery Schedule*, TRA Docket No. 97-00309 (Aug. 6, 2001) (attached hereto as **Exhibit A**).

<sup>38</sup> *TRA Transcript of Proceedings, July 12, 2001*, TRA Docket No. 97-00309, p. 9.

<sup>39</sup> A hearing on the issues related to nondiscriminatory access to OSS will be conducted in the OSS Docket. Any questions regarding the "scope" and "focus" of the OSS Docket should be addressed in that docket. See *TRA Transcript of Proceedings, July 12, 2001*, TRA Docket No. 97-00309, p. 44-46.

demonstration of compliance with Section 271(c)(1)(A) is hereby scheduled for October 3-5, 8-9, 2001.<sup>40</sup>

Respectfully submitted,



Director Melvin J. Malone, as Hearing Officer

ATTEST:



Executive Secretary

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<sup>40</sup> If at the hearing on Section 271(c)(1)(A) issues, BellSouth intends to rely on any information or documentation filed in this docket, 97-00309, before November 22, 1999, BellSouth must notify both the Authority and the parties with specificity on or before August 28, 2001, noon.



## TENNESSEE REGULATORY AUTHORITY

460 James Robertson Parkway  
Nashville, Tennessee 37243  
Telephone (615) 741-2904

### NOTICE OF FILING

**DOCKET:** 97-00309

**IN RE:** BELLSOUTH TELECOMMUNICATIONS, INC.'S  
ENTRY INTO LONG DISTANCE (INTERLATA)  
SERVICE IN TENNESSEE PURSUANT TO  
SECTION 271 OF THE TELECOMMUNICATIONS  
ACT OF 1996

**DATE:** August 6, 2001

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On July 30, 2001, BellSouth Telecommunications, Inc. ("BellSouth") submitted its 271 Filing with the Tennessee Regulatory Authority ("Authority"). The parties to the above-styled matter are hereby notified of the following discovery schedule:

**Tuesday, August 21, 2001**

All discovery requests shall be filed and copies served on parties.

**Tuesday, September 4, 2001**

All responses to discovery requests shall be filed and copies served on all parties.

The Intervenor in this action shall consolidate their discovery requests to BellSouth and, because of consolidation, shall be permitted to combine the limit on the number of discovery request allowed each party under Authority Rule 1220-1-2-.11(5)(a).

**FOR THE TENNESSEE REGULATORY AUTHORITY:**

  
Melvin J. Malone, Hearing Officer

cc: Parties of Record

original in docket file